OBSERVATIONS
CONCERNING
THE ORIGINALL
OF
GOVERNMENT,

Upon { *Mr.* HOBS *Leviathan.*
Mr. MILTON againſt *Salmaſius.*
H. GROTIUS *De Jure Belli.*

ARIST. POL. *Lib.* 4.

Ἡ πρώτη πολιτεία ἐν τοῖς Ἕλλησιν ἐγίνετο μετὰ τὰς βασιλείας ἐκ τῶν πολεμένων.

LONDON,
Printed for R. ROYSTON, at the *Angel*
in *Ivie-Lane*. 1652.

O

THE PREFACE.

With no ſmall content I read Mr. Hobs *Booke* De Cive, *and his* Leviathan, *about the Rights of Soveraignty, which no man, that I know, hath ſo amply and judiciouſly handled: I conſent with him about the Rights of* exerciſing *Government, but I cannot agree to his meanes of* acquiring *it. It may ſeem ſtrange I ſhould praiſe his building, and yet miſlike his Foundation; but ſo it is, his* Jus naturæ, *and his* Regnum Inſtitutivum *will not down with me: they appeare full of contradiction, and impoßibilities; a few ſhort notes about them, I here offer, wiſhing he would conſider whether his building would not ſtand firmer upon the Principles of* Regnum Patrimoniale (*as he calls it*) *both according to* Scripture *and* Reaſon. *Since he confeſſeth the* Father being before the inſtitution of a Common-Wealth was Originally an abſolute Soveraigne with power of Life and Death, *and that* a great Family, as to the Rights of Soveraignty is a little Monarchy. *If according to the order of Nature he had handled* Paternall Government *before that by* Inſtitution, *there would have been little liberty left in the Subjects of the Family to conſent to inſtitution of Government.*

In his pleading the Cauſe of the People, he armes them

with a very large Co miſsion of Array; *which is, a Right in Nature for every Man, to warre againſt every Man when he pleaſe: and alſo Right for all the People to governe. This latter Point, although he affirme in Words, yet by conſequence he denies, as to me it ſeemeth.*

He ſaith a Repreſentative *may be of* All, *or but of a* Part *of the People. If it be of* All *he termes it a* Democratie, *which is the Government of the People. But how can ſuch a Common-wealth be generated? for if every man Covenant with every Man, who ſhall be left to be the* Repreſentative? *if* All *muſt be* Repreſentatives, *who will remaine to Covenant? for he that is Soveraigne makes no Covenant by his Doctrine. It is not* All that will come together, *that makes the* Democratie, *but* all that have power *by Covenant; thus his* Democraty *by inſtitution failes.*

The ſame may be ſaid of a Democratie by acquiſition; *for if all be* Conquerours *who ſhall Covenant for Life and Liberty? and if all be not Conquerers, how can it be a* Democratie *by conqueſt?*

A Paternall Democratie *I am confident he will not affirme, ſo that in concluſion the poore People are deprived of their Government, if there can be no* Democratie *by his Principles.*

Next, if a Repreſentative ariſtocraticall *of a part of the People be free from covenanting, then that whole Aſſembly (call it what you will) though it be never ſo great, is in the ſtate of Nature, and every one of that Aſſembly hath a Right not onely to kill any of the Subjects that they meet with in the ſtreets, but alſo they all have a Naturall Right to cut one anothers throats, even while they ſit together in Councell by his Principles. In this miſerable condi-*

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tion of War is his Representative Aristocraticall *by institution.*

A Common-wealth by Conquest *he teacheth, is, then* acquired, *when the vanquished to avoid present death Covenanteth that so long as his Life, and the Liberty of his body is allowed him, the victor shall have the use of it, at his pleasure: here I would know how the Liberty of the vanquished can be allowed, if the victor have the use of it at pleasure, or how is it possible for the victor to performe his Covenant, except he could alwayes stand by every particular man to protect his Life and Liberty.*

In his review and conclusion he resolves, that an ordinary Subject hath liberty to submit, when the meanes of his life is within the Guards and Garisons of the enemy. It seemes hereby that the Rights of Soveraignty by institution may be forfeited, for the subject cannot be at liberty to submit to a conqueror, except his former subjection be forfeited for want of protection.

If his conqueror be in the state of nature, when he conquers he hath a right without any Covenant made with the conquered: If conquest be defined to be the acquiring of right of Soveraignty by victory, *why is it said* the Right is acquired in the Peoples submission, by which they contract with the victor, promising obedience for Life and Liberty? *hath not every one in the state of nature a right to Soveraignty, before conquest, which onely puts him in possession of his Right?*

If his Conqueror be not in the state of Nature, but a subject by Covenant, how can he get a right of Soveraignty by conquest when neither he himselfe hath right to conquer, nor subjects a liberty to submit? since a former Contract lawfully made cannot lawfully be broken by them.

The Preface.

I wish the Title of the Book had not been of a COMMON-WEALTH, *but of a* Weale Publique, *or* COMMON-WEALE, *which is the true word Carefully observed by our Translator of* Bodin de Republica *into English: Many ignorant men are apt by the Name of* Common-wealth *to understand a popular Government, wherein* Wealth *and all things shall be* Common, *tending to the* Levelling Community *in the state of pure Nature.*

Obser-

OBSERVATIONS
on Mr. Hobs LEVIATHAN:
OR,
HIS ARTIFICIALL MAN
A Common-wealth.

I.

IF God created onely *Adam*, and of a piece of him made the Woman; and if by generation from them two as parts of them all Mankind be propogated: If also God gave to *Adam* not onely the Dominion over the Woman and the Children that should Issue from them, but also over the whole earth to subdue it, and over all the Creatures on it, so that as long as *Adam* lived no man could claime or enjoy any thing but by donation, assignation, or permission from him: I wonder how the *Right of Nature* can be imagined by Mr. *Hobs*, which he saith is, *a liberty for each man to use his owne power as he will himself for preservation of his owne life; a condition of warre of every one against every one; a right of every man to every thing, even to one anothers body*, especially since himself affirms, *pag.* 178. *that originally the father of every man was also his Soveraigne Lord with power over him of life and death.* Pag. 64.

II.

Mr. *Hobs* confesseth and believes *it was never generally so*, that there was such a *jus naturæ*; and if not generally, then not at all, for one exception barres all if he marke it well; whereas he imagines such a *Right of Nature* may be now practiced *in America*,

he confeſſeth a government there of Families, which government how *ſmall* or *brutiſh* ſoever (as he calls it) is ſufficient to deſtroy his *jus naturale*.

III.

I cannot underſtand how this *Right of Nature* can be conceived without imagining a Company of men at the very firſt to have beene all Created together without any dependancy one of another, or as *Muſhromi* (*fungorum more*) *they all on a ſodaine were ſprung out of the earth without any obligation one to another*, as M. *Hobs* words are in his booke *De Cive*, *cap.* 8. *Sect.* 3: the Scripture teacheth us otherwiſe, that all men came by ſucceſſion, and generation from one man: we muſt not deny the truth of the Hiſtory of the Creation.

IV.

It is not to be thought that God would create man in a condition worſe then any beaſts, as if he made men to no other end by nature but to deſtroy one another, a right for the father to deſtroy or eat his Children, and for Children to do the like by their Parents, is worſe than Caniballs: This horrid Condition of rude nature when Mr. *Hobs* was charged with his refuge was to anſwere *that no Sinne can be underſtood to be in this ſtate of Nature*: which is all one with denying his owne principle, for if men be not free-borne, it is not poſſible for him to aſſigne and prove any other time for them to claime a right of nature to liberty, if not at their birth.

De Cive cap. 1. *ſect.* 10.

V.

But if it be allowed (which is yet moſt falſe) that a company of men were at firſt without a common power to keepe them in awe; I do not ſee why ſuch a condition muſt be called *a ſtate of warre of all men againſt all men*: indeed if ſuch a multitude of men ſhould be created as the earth could not well nouriſh, there might be cauſe for men to deſtroy one another rather then periſh for want of foode; but God was no ſuch niggard in the Creation, and there being plenty of ſuſtenance and roome for all men, there is no cauſe or uſe of warre till men be hindred in the preſervation

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of life, ſo that there is no abſolute neceſſity of warre in the ſtate of pure nature, it is the right of nature for every man to live in peace, that ſo he may tend the preſervation of his life, which whilſt he is in actuall warre he cannot do. Warre of it ſelf as it is warre preſerves no mans life, it onely helps us to preſerve and obtaine the meanes to live: if every man tend the right of preſerving life, which may be done in peace, there is no cauſe of warre.

VI.

But admit the ſtate of nature were the ſtate of warre, let us ſee what helpe Mr. *Hobs* hath for it. It is a principle of his, that *the law of nature is a rule found out by reaſon,* (I do thinke it is given by God) *forbidding a man to do that which is deſtructive to his life, and to omit that by which he thinkes it may be beſt preſerved*: If the right of nature be a liberty for a man to do any thing he thinkes fit to preſerve his life, then in the firſt place nature muſt teach him that life is to be preſerved, and ſo conſequently forbids to do that which may deſtroy or take away the meanes of life, or to omit that by which it may be preſerved: and thus the *Right of nature* and *the Law of nature* will be all one: for I thinke Mr. *Hobs* will not ſay the right of nature is a liberty for a man to deſtroy his owne life. The law of nature might better have been ſaid to conſiſt in a command to preſerve or not to omit the meanes of preſerving life, then in a prohibition to deſtroy or to omit it. Pag. 64.

VII.

Another principle I meete with, *If other men will not lay downe their Right as well as he, then there is no reaſon for any one to deveſt himſelf of his:* Hence it followes that if all the men in the world doe not agree, no Common-wealth can be eſtabliſhed, it is a thing impoſſible for all the men in the world every man with every man to Covenant to lay downe their right. Nay it is not poſſible to be done in the ſmalleſt Kingdome, though all men ſhould ſpend their whole lifes in nothing elſe but in running up and downe to Covenant. Pag. 65.

VIII.

Pag. 65. Right may be laid aſide but not transferd, for *he that renounceth or paſſeth away his right, giveth not to any other man a right which he had not before, and reſerves a right in himſelf againſt all thoſe with whom he doth not Covenant.*

IX.

Pag: 87. *The only Way to erect a Common power or a Common Wealth; is for men to confer all their power and ſtrength upon one man, or one aſſembly of men that may reduce all their wills by plurality of voices to one will; which is to appoint one man or an aſſembly of men to beare their perſon, to ſubmit their Wills to his will: this is a reall unity of them all in one perſon made by Covenant of every man with every man, as if every man ſhould ſay to every man, I authoriſe, and give up my Right of governing my ſelf to this man or this aſſembly of men, on this condition that thou give up thy right to him, and authoriſe all his actions. This done, the multitude ſo united is one Perſon, is called a Common-wealth.*

To authoriſe and give up his right of governing himſelfe, to confer all his power and ſtrength, and to ſubmit his will to another is to lay downe his Right of reſiſting: for if right of nature be a liberty to uſe power for preſervation of life, laying downe of that power muſt be a relinquiſhing of power to preſerve or defend life, otherwiſe a man relinquiſheth nothing.

To reduce all the wills of an aſſembly by plurality of voices to one will, is not a proper ſpeech, for it is not a plurality but a totality of voices which makes an aſſembly be of one will, otherwiſe it is but the one will of a major part of the aſſembly, the negative voice of any one hinders the being of the one will of the aſſembly, there is nothing more deſtructive to the true nature of a lawfull aſſembly then to allow a major part to prevaile when the whole onely hath right. For a man to give up his right to one that never Covenants to protect, is a great folly, ſince it is neither *in conſideration of ſome right reciprocally transferd to himſelf, nor* Pag. 66. *can he hope for any other good, by ſtanding out of the way, that the*

other

other may enjoy his owne originall right without hindrance from him by reaſon of ſo much diminution of impediments.

X.

The Liberty ſaith Mr. Hobs, *whereof there is ſo frequent and honourable mention in the Hiſtories and Philoſophy of the antient Greekes and Romans, and in the writings and diſcourſe of thoſe that from them have received all their Learning in the Politiques, is not the Liberty of particular men, but the Liberty of the Common-wealth. Whether a common-wealth be Monarchicall or Popular, the Freedome is ſtill the ſame.* Here I finde Mr. *Hobs* is much miſtaken: for the Liberty of the Athenians and Romans was a liberty only to be found in Popular Eſtates, and not in Monarchies. This is cleere by *Ariſtotle*, who calls a City a Comunity of Freemen, meaning every particular Citizen to be free. Not that every particular man had a liberty to reſiſt his Governour or do what he liſt, but a Liberty onely for particular men, *to Governe* and *to be Governed* by turnes. ἄρχειν and ἄρχεσθαι are *Ariſtotles* words: this was a liberty not to be found in hereditary Monarchies: ſo *Tacitus* mentioning the ſeverall governments of *Rome*, joyns the Conſulſhip and Liberty to be brought in by *Brutus*, becauſe by the anuuall election of Conſuls, particular Citizens came in their courſe to governe and to be governed. This may be confirmed by the complaint of our Author which followeth. *It is an eaſie thing for men to be deceived by the ſpecious name of Liberty: and for want of judgement to diſtinguiſh, miſtake that for their private inheritance or birth-right which is the right of the publique onely: And when the ſame errour is confirmed by the authority of men in reputation for their writings in this ſubject, it is no wonder if it produce ſedition and change of government. In the Weſterne parts of the World, We are made to receive our opinions concerning the inſtitution and right of Common-wealths from* Ariſtotle *and* Cicero, *and other men, Greekes and Romans, that living under popular eſtates, derived thoſe rights not from the principles of Nature, but tranſcribed them into their Bookes out of the practiſe of their owne Common-Wealths, which were Popular.* And *becauſe the Athenians were taught (to keepe them from deſire of changing their government) that they were free-men, & all that lived under Monarchy Slaves: there-*

fore Aristotle *puts it downe in his Politiques. In Democratie Liberty is to be supposed, for its commonly held that no man is Free in any other Government. So* Cicero *and other Writers grounded their civill Doctrine on the opinions of the* Romans, *who were taught to hate Monarchy, at first, by them that having deposed their Soveraigne, shared amongst them the Soveraignty of* Rome. *And by reading of these* Greeke *and* Latine *Authors, men from their childhood have gotten a habit (under a false shew of Liberty) of favouring tumults, and of licencious controwling the actions of their Soveraignes.*

XI.

P.102. *Dominion paternal not attained by Generation but by contract,* which is the *Childs consent either expresse or by other sufficient arguments declared.* How a Child can expresse consent, or by other sufficient arguments declare it before it comes to the age of discretion I understand not, yet all men grant it is due before consent can be given: and I take it Mr. *Hobs* is of the same mind,

P.249. where he teacheth that *Abrahams Children were bound to obey what Abraham should declare to them for Gods law: which they could not be but in vertue of the obedience they owed to their Parents;* they owed not that they covenanted to give. Also where he saith

P.121. the *Father and Master being before the institution of Common-wealts absolute Soveraignes in their owne Families,* how can it be said that either Children or Servants were in the state of *jus naturæ* till the institutions of Common-weales? It is said by Mr. *Hobs* in his Booke *De Cive, cap. 9. Section 7.* the *Mother originally hath the government of her Children, and from her the Father derives his right, because she brings forth and first nourisheth them.* But we know that God at the Creation gave the Soveraignty to the man over the Woman, as being the mother and principle agent in generation. As to the objection that *it is not knowne who is the Father to the Son but by the discovery of the mother,* and that *he is his Son whom the mother will, and therefore he is the mothers.* The answere is, that it is not at the will of the mother to make whom she will the Father, for if the Mother be not in the possession of a Husband, the Child is not reckoned to have any Father at all; but if she be in the possession of a man, the Child notwithstanding

whatsoever

whatsoever the woman discovereth to the contrary is still reputed to be his in whose possession she is. No Child naturally and infallibly knowes who are his true Parents, yet he must obey those that in common reputation are so, otherwise the Commandement of *Honour thy Father and thy Mother* were vaine, and no Child bound to the obedience of it.

XII.

If the government of one man, and the government of two men, make two severall kindes of government, why may not the government of two, and the government of three, doe the like, and make a third? and so every differing number a differing kind of Common-wealth. If *an assembly of all* (as Mr. *Hobs* saith) *that will come together be a Democraty*, and *an assembly of a part onely an Aristocratie, then* if all that will come together be but a part only, a *Democratie* and *Aristocratie* are all one; and why must an assembly of part be called an *Aristocraty* and not a *Merocraty*? 94.

It seemes Master *Hobs* is of the mind that there is but one kind of Government, and that is Monarchy, for he defines a *Common-wealth to be one person, and an Assembly of men or reall Unity of them all in one and the same person, the multitude so united he calls a Common wealth*: This his moulding of a multitude into one person, is the generation of his great *Leviathan*, the King of the Children of Pride: thus he concludes the person of a Common-wealth to be a Monarch. 87. P.167.

XIII.

I cannot but wonder Master *Hobs* should say, *the consent of a Subject to Soveraigne power is conteined in these words, I Authorise, and do take upon me all his Actions, in which there is no restriction at all of his owne former naturall liberty*. Surely here Master *Hobs* forgot himselfe, for before he makes the resignation to goe in these words also, I *give up my right of governing my selfe to this man*: This is a restriction certainly of his owne former naturall liberty when he gives it away: and if a man allow his Soveraigne to kill him, which Master *Hobs* seemes to confesse, how can he re- P.111.

serve

ſerve a right to defend himſelfe? And if a man have a power and right to kill himſelfe, he doth not authoriſeand give up his right to his Soveraigne, if he doe not obay him when he Commands him to kill himſelfe.

XIV.

Pag. 112. Maſter *Hobs* ſaith, *no man is bound by the words of his ſubmiſſion to kill himſelf, or any or another man:* and *conſequently that the obligation a man may ſometimes have upon the command of the Soveraigne to execute any dangerous or diſhonourable office, dependeth not on the words of our ſubmiſſion, but on the intention which is to be underſtood by the end thereof. When therefore our refuſall to obey, fruſtrates the end for which the Soveraignty was ordained, then there is no liberty to refuſe: otherwiſe there is.* If no man be bound by the words of his Subjection to kill any other man, then a Soveraigne may be denied the benefit of warre, and be rendred unable to defend his people, and ſo the end of government fruſtrated. If the obligation upon the Commands of a Soveraigne to execute a dangerous or diſhonourable office, dependeth not on the words of our Submiſſion, but on the intention, which is to be underſtood by the end thereof; No man, by Maſter *Hobs* rules, is bound but by the words of his ſubmiſſion, the intention of the Command bindes not, if the words doe not: If the intention ſhould bind, it is neceſſary the Soveraigne muſt diſcover it, and the people muſt diſpute and judge it, which how well it may conſiſt with the Rights of Soveraignty Maſter *Hobs* may conſider: whereas Maſter *Hobs* ſaith the *Intention is to be underſtood by the Ends*, I take it he meanes the end by effect, for the end and the intention are one and the ſame thing; and if he meane the effect, the obedience muſt goe before, and not depend on the underſtanding of the effect, which can never be, if the obedience doe not preced it: In fine, he reſolves refuſall to obey, may depend upon the judging of what fruſtrates the end of Soveraignty and what not, of which he cannot meane any other Judge but the people.

XV.

XV.

Mr. *Hobs* puts a Caſe by way of queſtion. *A great many men together have already reſiſted the Soveraigne power unjuſtly, or committed ſome capitall crime, for which every one of them expecteth death: whether have they not the liberty then to joyne together ana aſſiſt and defend one another? certainly they have, for they but defend their lives, which the guilty man may as well doe as the innocent: There was indeede injuſtice in the firſt breach of their duty, their bearing of arms ſubſequent to it, though it be to maintaine what they have done, is no new unjuſt act, and if it be onely to defend their perſons it is not unjuſt at all.* The onely reaſon here alledged for the bearing of armes is this, that it is no new unjuſt act, as if the beginning onely of a rebellion were an unjuſt act, and the continuance of it none at all: No better anſwer can be given to this caſe then what the Author himſelfe hath delivered in the beginning of the ſame Paragraph in theſe words; *To reſiſt the ſword of the Commonwealth in defence of another man, guilty or innocent, no man hath liberty: becauſe ſuch liberty takes away from the Soveraigne the meanes of protecting us, and is therefore deſtructive of the very Eſſence of government.* Thus he firſt anſwers the queſtion, and then afterwards makes it and gives it a contrary anſwer; other paſſages I meet with to the like purpoſe. He ſaith *a man cannot lay down the right of reſiſting them that aſſault him by force to take away his life: The ſame be ſaid of wounds, chaines and impriſonment. A covenant to defend my ſelfe from force by force is void. Right of defending life and meanes of living can never be abandoned.* Pag. 112. Pag. 66. P. 69. P. 68.

Theſe laſt doctrines are deſtructive to all Government whatſoever, and even to the *Leviathan* it ſelfe: hereby any rogue or villaine may murder his Soveraigne, if the Soveraigne but offer by force to whip or lay him in the ſtocks, ſince whipping may be ſaid to be a wounding, and putting in the ſtocks an impriſonment: ſo likewiſe every mans goods being a means of living, if a man cannot abandon them, no contract among men, be it never ſo juſt, can be obſerved: thus we are at leaſt in as miſerable a condition of warre as Mr. *Hobs* at firſt by nature found us.

XVI.

P.116. *The Kingdome of God signifies,* saith Master Hobs, *a Kingdome Constituted by the votes of the people of* Israel *in a peculiar manner, wherein they choose God for their King by Covenant made with him, upon Gods promising them* Canaan. If we look upon Master *Hobs* text for this, it will be found that the people did not constitute by Votes, and choose God for their King; But by the appointment first of God himselfe the Covenant was to be a God to them: They did not contract with God, that if he would give them *Canaan*, they would be his Subjects, and he should be their King: It was not in their power to choose whether God should be their God, yea, or nay: for it is confessed *he reigned naturally over all by his might*. If God raigned naturally he had a Kingdome, and Soveraigne power over his Subjects, not acquired by their owne consent. This Kingdome said to be constituted by the Votes of the people of *Israel*, is but the Vote of *Abraham* onely, his single voice carried it, he was the representative of the people. For at this Vote, it is confessed that the name of *King* is not given to God, nor of *Kingdome* to *Abraham*, yet the thing if we will believe Master *Hobs* is all one. If a Contract be the mutuall transferring of Right, I would know what Right a people can have to transfer to God by Contract. Had the people of *Israel* at Mount *Sinai* a right not to obey Gods voice? If they had not such a right, what had they to transfer?

The Covenant mentioned at Mount *Sinai* was but a Conditionall Contract, and God but a Conditionall King, and though the people promised to obey Gods word, yet it was more then they were able to performe, for they oft disobeyed Gods voice, which being a breach of the Condition the Covenant was void, and God not their King by Contract.

It is complained by God, *They have rejected me that I should not raigne over them*: but it is not said according to their contract; for I doe not finde that the desiring of a King was a breach of their Contract or Covenant, or disobedience to the voice of God: there is no such law extant.

The people did not totally reject the Lord, but in part onely, out of timerousnesse, when they saw *Nahash* King of the children of *Ammon* come against them, they distrusted that God would not

not ſodainly provide for their deliverance, as if they had had alwaies a King in readieneſſe to goe up preſently to fight for them: This deſpaire in them who had found ſo many miraculous deliverances under Gods Government, was that which offended the Lord ſo highly: they did not deſire an alteration of Government, and to caſt off Gods Lawes, but hoped for a certainer and ſpeedier deliverance from danger in time of war. They did not petition that they might chooſe their King themſelves, that had beene a greater ſinne, and yet if they had, it had not beene a totall rejection of Gods raigning over them, as long as they deſired not to depart from the worſhip of God their King, and from the obedience of his Lawes. I ſee not that the Kingdome of God was caſt off by the election of *Saul*, ſince *Saul* was choſen by God himſelfe, and Governed according to Gods Lawes. The Government from *Abraham* to *Saul* is no where called the Kingdome of God, nor is it ſaid that the Kingdome of God was caſt off at the election of *Saul*.

Maſter *Hobs* allows that, *Moſes alone had next under God the Soveraignty over the Iſraelites*, pag. 252. but he doth not allow it to *Joſhuah*, but will have it deſcend to *Eleazer* the High-Prieſt, *Aarons* ſon. His proofe is, God expreſly ſaith concerning *Joſhuah*, *He ſhall ſtand before* Eleazer, *who ſhall aske counſell from him before the Lord*, (after the judgement of *Urim* is omitted by Maſter *Hobs*) *at his word ſhall they goe out*, &c. therefore the *Supreme power of making Peace and Warre was in the Prieſt*. Anſwer, The worke of the High Prieſt was onely *Miniſteriall* not *Magiſteriall*; he had no power to command in Warre; or to judge in Peace; onely when the Soveraigne or Governour did goe up to Warre, he enquired of the Lord by the Miniſtery of the High Prieſt, and as the Hebrews ſay, the enquirer with a ſoft voice as one that prayeth for himſelfe, asked: and forthwith the holy Ghoſt came upon the Prieſt, and he beheld the Breſt-plate, and ſaw therein by the Viſion of Prophecy, *Goe up*, or *Goe not up*, in the letters that ſhewed forth themſelves upon the Breſt-plate before his face: then the Prieſt anſwered him, *Goe up*, or *Goe not up*. If this anſwer gave the Prieſt the Soveraignty, then neither King *Saul* nor King *David* had the Soveraignty, who both asked counſell of the Lord by the Prieſt.

OBSERVATIONS ON Maſter *MILTON* againſt SALMASIUS.

I.

AMong the many Printed Bookes, and ſeverall Diſcourſes touching the Right of *Kings*, and the Liberty of the *People*, I cannot finde that as yet the firſt and chiefe point is agreed upon, or indeed ſo much as once Diſputed. The word *King* and the word *People* are familiar, one would thinke every ſimple man could tell what they ſignifyed; but upon examination it will be found that the learnedſt cannot agree of their meaning.

Aske *Salmaſius* what a King is, and he will teach us that *a King is he who hath the Supreme power of the Kingdome, and is accountable to none but God, and may do what he pleaſe, and is free from the Lawes.* This definition *J. M.* abominates as being the definition of a Tyrant: And I ſhould be of his minde, if he would have vouchſafed us a better, or any other definition at all, that would tell us how any King can have a Supreme Power, without being freed from humane Lawes: To finde fault with it, without producing any other is to leave us in the darke: But though Mr. *M.* brings us neither Definition nor Deſcription of a King, yet we may pick out of ſeverall paſſages of him, ſomething like a definition, if we lay them together. He teacheth us that *power was therefore given to a King by the people, that he might ſee by the authority to him committed that nothing be done againſt Law: And that he keeps our Lawes, and not impoſe upon his owne: Therefore there is no*

regall power but in the Courts of the Kingdome and by them, pag. 155.

And againe he affirmeth, *the King cannot Impriſon, Fine, or puniſh any man except he be firſt cited into ſome Court; where not the King, but the uſuall Judges give Sentence*, pag. 168. and before we are told *not the King, but the Authority of Parliament doth ſet up and take away all Courts*, pag. 167.

Lo here the deſcription of a King, He is *one to whom the People give power, to ſee that nothing be done againſt Law:* and yet he ſaith there is *no regall power but in the Courts of Juſtice, and by them, where not the King but the uſuall Judges give Sentence.* This Deſcription not onely ſtrips the King of all power whatſoever, but puts him in a Condition below the meaneſt of his Subjects.

Thus much may ſhew that all men are not agreed what a King is. Next, what the word *People* means is not agreed upon: aske *Ariſtotle* what the People is, & he will not allow any power to be in any but in free Citizens. If we demand who be free Citizens? that he cannot reſolve us, for he confeſſeth that *he that is a free Citizen in one City, is not ſo in another City.* And he is of opinion that *no artificer ſhould be a free Citizen, or have voice in a well ordered Commonwealth*; he accounts a *Democratie* (which word ſignifies the Government of the people) *to be a Corrupted ſort of Government*; he thinkes *many men by nature borne to be Servants and not fit to governe as any part of the people.* Thus doth *Ariſtotle* curtall the people, and can give us no certaine rule to know who be the people: Come to our Moderne Polititians, and aske them who the people is, though they talke big of the people, yet they take up and are content with a *few Repreſentors* (as they call them) *of the whole people*; a point *Ariſtotle* was to ſeeke in, neither are theſe repreſentors ſtood upon to be the whole people, but the *major part of theſe repreſentors muſt be reckoned for the whole people*; nay *J. M.* will not allow the major part of the repreſentors to be the people, but the *ſounder & better part only* of them, & in right downe termes he tells us *to determine who is a Tyrant, he leaves to Magiſtrates at leaſt to the uprighter ſort of them, and of the people, though in number leſſe by many to judge as they finde cauſe.* If the *Sounder, the Better, and the uprighter* part have the power of the people, how ſhall we know, or who ſhall judge who they be?

P. 126.

Pag. 7.

II.

One Text is urged by Mr. *Milton*, for the peoples power: *Deut.* 17.14. *When thou art come into the Land which thy Lord thy God giveth thee, and ſhalt ſay, I will ſet a King over mee, like as all the Nations about me.* It is ſaid by the tenure of Kings *theſe words confirme us that the right of chooſing, yea, of changing their own government is by the grant of God himſelfe in the People*: But can the foretelling or forewarning of the *Iſraelites* of a wanton, and wicked deſire of theirs, which God himſelfe condemned, be made an argument that God gave or granted them a right to do ſuch a wicked thing? or can the narration and reproving of a future fact be a donation and approving of a preſent right, or the permiſſion of a ſin be made a commiſſion for the doing of it? the Author in his Booke againſt *Salmaſius* falls from making God the Donor or Granter, that hee cites him onely for a witneſſe, *Teſte ipſo Deo penes populos arbitrium ſemper fuiſſe, vel ea, quæ placeret forma reipub. utendi, vel hanc in aliam mutandi, de Hebreis de hoc diſerte dicit Deus: de reliquis non abnuit.*

That here in this Text *God himſelfe being witneſſe, there was alwayes a power in the People, either to uſe what forme of Government they pleaſed, or of changing it into an other: God ſaith this expreſly of the* Hebrews, *and denies it not of others.* Can any man find that God in this Text expreſſely ſaith, that there was alwayes a right in the People, to uſe what forme of Government they pleaſe? The Text not warranting this right of the People, the foundation of the defence of the People is quite taken away: there being no other grant, or proofe of it pretended.

2. Where it is ſaid that *the Iſraelites deſired a King, though then under another forme of Government*, in the next line but one it is confeſſed they had a King at the time when they deſired a King, which was God himſelfe, and his Viceroy *Samuel*, and ſo ſaith God *they have not rejected thee; but they have rejected me that I ſhould not raigne over them*: yet in the next verſe God ſaith, *as they have forſaken mee, ſo do they alſo unto thee.* Here is no ſhew of any other forme of Government but Monarchy: God by the mediation of *Samuel* raigned, who made his Sons Judges over *Iſrael*;

Israel; when one man constitutes Judges wee may call him a King, or if the having of Judges do alter the Government, then the Government of every Kingdome is altered from Monarchy, where Judges are appointed by Kings: it is now reckoned one of the duties of Kings to judge by their Judges only.

3. Where it is said, *he shall not multiply to himselfe horses, nor Wives, nor Riches, that he might understand that hee had no power over others, who could decree nothing of himselfe, extra legem*, if it had said *contra legem Dei*, it had beene true, but if it meant *extra legem humanam*, it is false.

4. If there had beene any right given to the People, it seemes it was to the Elders onely, for it is said it was the Elders of *Israel* gathered together, petitioned for a King, it is not said it was all the People, nor that the People did choose the Elders, who were the Fathers and heads of Families authorised by the Judges.

5. Where it is said, *I will set a King over mee like as all the Nations about me. To set a King*, is, not to choose a King, but by some solemne publique act of Coronation, or otherwise to acknowledge their allegiance to the King chosen; It is said thou shalt *set him King whom the Lord thy God shall choose*. The Elders did not desire to choose a King like other Nations, but they say *now make us a King to judge us like all the Nations*.

III.

As for *Davids* Covenant with the Elders when hee was annointed, it was not to observe any Lawes or Conditions made by the People for ought appeares; but to keepe Gods Lawes and serve him, and to seeke the good of the People as they were to protect him.

6. The *Reubenites* and *Gadites* promise their obedience, not according to their Lawes or conditions agreed upon, but in these words, *all that thou comandest us we will do, and whithersoever thou sendest us will go, as we harkned to* Moses *in all things, so will we harken unto thee: only the Lord thy God be with thee as he was with Moses*. Where is there any condition of any humane Law expressed? Though the rebellious Tribes offered conditions to *Rehoboam*: where can we find that *for like conditions not performed*,

ed, *all Israel deposed Samuel?* I wonder Mr. *M.* should say this, when within a few lines after hee professeth that *Samuel had governd them uprightly.*

I V.

Jus Regni is much stumbled at, and the definition of a King, which saith *His power is supreme in the Kingdome, and hee is accountable to none but to God, and that he may do what he please, and is not bound by Lawes*; it is said if this definition be good, no man is or ever was, who may be said to be a tyrant, for *when he hath violated all Divine and humane Lawes, nevertheless he is a King, and guiltlesse jure Regio.* To this may be answered, That the definition confesseth he is accountable to God, and therefore not guiltlesse if he violate Divine Laws: humane Lawes must not be shuffled in with Divine, they are not of the same authority: if humane Lawes bind a King, it is impossible for him to have supreme power amongst men. If any man can finde us out such a kinde of Government, wherein the supreme power can be, without being freed from humane Lawes, they should first teach us that; but if all sorts of popular Government that can be invented, cannot be one minute without an arbitrary power freed from all humane Lawes: what reason can be given why a royall Government should not have the like freedome? if it be tyranny for one man to governe arbitrarily, why should it not be farre greater tyranny for a multitude of men to governe without being accountable or bound by Lawes? It would be further enquired how it is possible for any Government at all to be in the World without an arbitrary power; It is not power except it be arbitrary: a legislative power cannot be without being absolved from humane Lawes, it cannot be shewed how a King can have any power at all but an arbitrary power. Wee are taught that *power was therefore given to a King by the People, that hee might see by the authority to him committed, that nothing be done against Law, and that he keepe our Lawes, and not impose upon us his own: therefore there is no royall power, but in the Courts of the Kingdome, and by them*, p. 155. and again it is said, *the King cannot imprison, fine, or punish any man except he be first cited into some Court, where not the King but the usuall Judges give sentence*, p. 168

Pag. 14.

and before we are told *not the King, but the authority of* Parl. *doth ſet up and take away all Courts*, p. 167.

Lo here we have Mr. *Miltons* perfect definition of a King. He is one to whom the People gave *power to ſee that nothing be done againſt Law, and that he keepe our Lawes, and not impoſe his own.* Whereas all other men have the faculty of ſeeing by nature, the King onely hath it by the gift of the people, other power he hath none, hee may ſee the Judges keepe the Lawes if they will; hee cannot compell them, for he may not impriſon, fine, nor puniſh any man, the Courts of Juſtice may, and they are ſet up and put downe by the Parliament; yet in this very definition of a King, we may ſpy an arbitrary power in the King, for hee may winke if hee will: and no other power doth this diſcription of a King give, but onely a power to ſee: whereas it is ſaid *Ariſtotle doth mention an abſolute Kingdome, for no other cauſe, but to ſhew how abſurd, unjuſt and moſt tyranicall it is*: There is no ſuch thing ſaid by *Ariſtotle*, but the contrary, where hee ſaith, that *a King according to Law makes no ſort of Government*; and after hee had reckoned up five ſorts of Kings, hee concludes that there were in a manner but two ſorts, the *Lacedemonian* King, and the abſolute King; whereof the firſt was but as a Generall in an army, and therefore no King at all, and then fixes and reſts upon the *abſolute King, who ruleth according to his own will.*

V.

If it be demanded what is meant by this word People? 1. Sometimes it is *populus univerſus*, and then every child muſt have his conſent asked, which is impoſſible. 2. Sometimes it is *pars major*, and ſometimes *pars potior & ſanior*; How the major part, where all are alike free can binde the Minor part is not yet proved.

But it ſeemes the major part will not carry it, nor be allowed except they be the *better part and the ſounder part.* We are told *the ſounder part implored the helpe of the Army when it ſaw it ſelfe, and the Common-wealth betrayed*, and that the *Soldiers judged better then the great Councell, and by Armes ſaved the Common-wealth, which the great Councell had almoſt damned by their Votes*, P. 7.

Hee

Here we see what the *People is*; to wit *the sounder part of which the Army is the judge*: thus upon the matter the Souldiers are the Pep||e: which being so, we may discerne where the liberty of the Pep e lieth, which wee are taught to consist *all for the most part in the power of the Peoples choosing what forme of Government they please*. A miserable liberty, which is onely to choose to whom we will give our liberty, which we may not keepe. See more concerning the People in the book entitled the Anarchy, p.8,9,10,11, 12,13, 14. P. 61.

VI.

We are taught that *a Father and a King are things most divers. The Father begets us, But not the King; but wee create the King: Nature gives a Father to the People, the People give themselves a King; If the Father kill his sonne hee loseth his life, why should not the King also?* p.34.

Answ. Father and King are not so divers, it is confessed that at first they were all one, for there is confessed *Paternum imperium & hereditarium.* p.141. and this fatherly empire as it was of it selfe *hereditary*; so it was *alienable* by the Parent, and *seizable* by an usurper as other goods are: and thus every King that now is hath a paternall Empire, either by inheritance, or by translation or usurpation, so a Father and a King may be all one.

A Father may die for the murther of his Son, where there is a superior Father to them both, or the right of such a supreme Father; but where there are only Father and Sons, no Sons can question the Father for the death of their brother: the reason why a King cannot be punished is not becaus hee is excepted from punishment, or doth not deserve it, but becaus there is no superiour to judge him, but God onely, to whom hee is reserved.

VII.

It is said thus, *hee that takes away from the People the power of chooſing for themselves, what forme of Government they pleaſe; hee doth take away that wherein all civill liberty almoſt consists.* p.65. If almoſt all liberty be in chooſing of the kind of Government,

the people have but a poore bargaine of it, who cannot exerciſe their liberty, but in chopping and changing their government, and have liberty onely to give away their liberty, then which there is not a greater miſchiefe, as being the cauſe of endleſſe ſedition.

VIII.

If there be any Statute in our Law, by which thou canſt finde that Tyrannicall power is given to a King, that Statute being contrary to Gods will, to nature and reaſon, underſtand that by that generall and primary law of ours, that Statute to be repealed and not of force with us. Pag. 153. Here if any man may be judge, what Law is contrary to Gods will, or to nature, or to reaſon, it will ſoon bring in confuſion: Moſt men that offend, if they be to be puniſhed, or Fined, will thinke that Statute that gives all Fines and Forfeitures to a King to be a Tyrannicall Law, thus moſt Statutes would be judged void, and all our forefathers taken for fooles or madmen, to make all our Lawes to give all penalties to the King.

IX.

The ſin of the Children of *Iſrael* did lie, not in deſiring a King, but in deſiring ſuch a King, like as the nations round about had; they diſtruſted God Almighty that Governed them by the Monarchicall power of *Samuel*, in time of oppreſſion, when God provided a judge for them; but they deſired a perpetuall and an hereditary King, that they might never want; in deſiring a King they could not ſin, for it was but deſireing what they enjoyed, by Gods ſpeciall providence.

X.

Men are perſwaded that in the making of a Covenant, ſomething is to be performed on both parts by mutuall ſtipulation, which is not alwaies true: for we finde God made *a Covenant with* Noah *and his ſeede, with all the fowle and the Cattle, not to deſtroy the earth any more by a Floud.* This Covenant was to be kept on Gods part, neither *Noah* nor the Fowle, nor the Cattle, were to perform any thing by this Covenant. On the other ſide, *Gen.* 17. 9. 10. God Covenants with *Abraham*, ſaying, *thou ſhalt keep my Covenant —— every male child among you ſhall be Circumciſed.* Here it is called Gods Covenant, though it be to be performed onely

onely by *Abraham*; ſo a Covenant may be called the Kings Covenant, becauſe it is made to him, and yet to be performed onely by the people. So alſo, 2 *King.* 11.17. *Jehoiada made a Covenant between the Lord and the King and the people, that they ſhould be the Lords People.* Between the *King alſo and the People*, which might wel be, that the people ſhould be the Kings ſervants: and not for the Kings covenanting to keep any humane Laws, for it is not likely the King ſhould either Covenant, or take any oath to the people when he was but ſeven yeares of Age, and that never any King of *Iſrael* tooke a Coronation Oath that can be ſhewed: when *Jehoiada* ſhewed the King to the Rulers in the houſe of the Lord, he tooke an oath of the People: he did not article with them, but ſaith the next verſe, *Commanded them to keep a watch of the Kings houſe, and that they ſhould compaſſe the King round about, every man with his weapons in his hand, and he that commeth within the ranges let him be ſlaine.*

XI.

To the Text. *Where the word of a King is, there is Power, and who may ſay to him, what doeſt thou?* J.M. gives this anſwer, *It is apparant enough that the Preacher in this place gives precepts to every private man, not to the great Synedrin, nor to the Senat: ---- ſhall not the Nobles, ſhall not all the other Magiſtrates, ſhall not the whole People dare to mutter, ſo oft as the King pleaſeth to dote?* We muſt here note, that the great Counſell, and all other Magiſtrates or Nobles, or the whole People compared to the King, are all but private men, if they derive their power from him: they are Magiſtrates under him, & out of his preſence, for when he is in place, they are but ſo many private men. *J.M.* askes, *who ſweares to a King, unleſſe the King on the other ſide be ſworne to keep Gods Lawes, and the Lawes of the Country?* We find that the rulers of *Iſrael* tooke an oath at the Coronation of *Jehoaſh*: But we finde no oath taken by that King, no not ſo much as to Gods lawes, much leſſe to the Laws of the Countrey.

XII.

A Tyrant is he who regarding neither Law, nor the Common good, reignes onely for himſelfe and his faction, pag. 19. in his defence he

 expreſſeth

expreſſeth himſelfe thus, *He is a Tyrant who lookes after onely his owne, and not his peoples profit*, Eth. l. 10. p. 189.

1. If it be Tyranny not to regard the Law, then all Courts of equity, and pardons for any offences muſt be taken away: there are far more ſuits for reliefe againſt the Lawes, then there be for the obſervation of the Lawes: there can be no ſuch Tyranny in the world as the Law, if there were no equity to abate the rigor of it. *Summum jus* is *Summa injuria*, if the penalties & forfeitures of all Lawes ſhould ſtill be exacted by all Kings, it would be found that greateſt Tyranny would be for a King to governe according to Law, the Fines, Penalties, and forfeitures of all Lawes are due to the Supreame power onely, and were they duly paid, they would farre exceede the Taxes in all places. It is the chiefe happineſſe of a Kingdome and their chiefe liberty not to be governed by the Lawes onely.

2. *Not to regard the Common good, but to raigne onely for himſelfe*, is the ſuppoſition of an impoſſibility in the judgement of *Ariſtotle*, who teacheth us that *the deſpoticall power cannot be preſerved, except the Servant or he in Subjection be alſo preſerved.* The truth of this ſtrongly proves, that it is in nature impoſſible to have a forme of Government that can be for the deſtruction of a people, as Tyranny is ſuppoſed; if we will allow people to be Governed, we muſt grant they muſt in the firſt place be preſerved, or elſe they cannot be Governed.

Kings have been and may be vitious men, and the Government of one not ſo good, as the Government of an other, yet it doth not follow that the forme of Government is or can be in its owne nature ill, becauſe the Governour is ſo: it is Anarchy or want of Government, that can totally deſtroy a Nation. We cannot finde any ſuch Government as Tyranny mentioned or named in Scripture, or any word in the Hebrew tongue to expreſſe it. After ſuch time as the Cities of *Greece* practiſed to ſhake off Monarchy, then and not till then (which was after *Homers* time) the name of Tyrant was taken up for a word of diſgrace, for ſuch men as by craft or force reſted the power of a City, from a multitude to one man onely; and not for the *exerciſing*, but for the ill *obtaining* of the Government: but now every man that is but thought to govern ill, or to be an ill man, is preſently termed a Tyrant,

Tyrant, and ſo judged by his Subjects. Few remember the prohibition, *Exod.* 22. 28. *Thou ſhalt not Revile the Gods, nor curſe the Ruler of thy people:* and fewer underſtand the reaſon of it. Though we may not judge one another, yet we may ſpeak evill or revile one another, in that which hath been lawfully judged, and upon a Tryal wherein they have been heard condemned: this is not to judge, but onely to relate the judgement of the Ruler. To ſpeake evill or to revile a Supreame Judge, cannot be without judging him who hath no Superior on earth to judge him, and in that regard muſt alwaies be preſumed innocent, though never ſo ill, if he cannot lawfully be heard.

I. M. That will have it Tyranny in a King not to regard the Lawes, doth himſelfe give as little regard to them as any man, where he reckons that *conteſting for Priviledges, Cuſtoms, Forms, and that old entanglement of Iniquity, their gibriſh Lawes, are the badges of ancient Slavery.* Tenure, pag. 3. *a diſputing Preſidents, Formes and Circumſtances,* pag. 5.

J. M. is alſo of opinion, that *If at any time our Fore-fathers out of baſeneſſe have loſt any thing of their right, that ought not hurt us, they might if they would promiſe Slavery for themſelves, for us certainly they could not, who have alwaies the ſame right to free our ſelves, that they had to give themſelves to any man in ſlavery.* This Doctrine well practiſed, layeth all open to conſtant Anarchy.

Laſtly, if any deſire to know what the liberty of the People is which *J. M.* pleads, for, he reſolves us, ſaying, that *he that takes away from the people, the right of chooſing what forme of Government they pleaſe, takes away truely that in which all liberty doth almoſt conſiſt.* It is well ſaid by *I. M.* that all liberty doth almoſt conſiſt in chooſing their forme of government, for there is another liberty exerciſed by the people, which he mentions not, which is the liberty of the peoples chooſing their Religion; every man may be of any Religion, or of no Religion; *Greece* & *Rome* have beene as famous for *Polythiſme*, or multitudes of Gods, as of Governors, and imagining Ariſtocraty and Democraty in Heaven, as on Earth.

OBSER-

OBSERVATIONS
UPON
H. GROTIUS,
De Jure Belli, & Pacis.

IN moſt queſtions of weight and difficulty concerning the right of Warre, or Peace, or ſupreame Power, *Grotius* hath recourſe to the Law of Nature, or of Nations, or to the primitive will of thoſe men who firſt joyned in Society. It is neceſſary therefore a little to lay open the variety or contrariety in the Civill and Canon law, and in *Grotius* himſelfe, about the law of Nature and Nations, not with a purpoſe to raiſe any Contention about words or phraſes, but with a deſire to reconcile or expound the ſenſe of Different termes.

Civilians, Canoniſts, Polititians, & Divines, are not a litle perplexed in diſtinguiſhing between the law of *Nature,* and the law of *Nations:* about *Ius naturæ,* and *Ius Gentium,* there is much Diſpute by ſuch as handle the originall of Government, and of *Propery* and *Community.*

The Civill law in one text allowes a threefold diviſion of *Law* into *Jus Naturæ, Jus Gentium,* and *Jus Civile.* But in another text of the ſame law, we finde onely a twofold diviſion into *Jus Civile,* and *Jus Gentium.* This latter diviſion the Law takes from *Gaius,* the former from *Ulpian,* who will have *Jus Naturale* to be *that which nature hath taught all creatures, quod Natura omnia animalia docuit,* but for this he is confuted by *Grotius, Salmaſius,* and others, who reſtraine the Law of Nature one-

ly to *men using Reason*; which makes it all one with the *Law of Nations*, to which the Canon Law consents, and saith, That *Jus Naturale est commune omnium nationum*: *That which Natural Reason appoints all men to use is the law of Nations*, saith *Theophilus* in the text of the civill law: and in the second book of the *Instit. cap.* 1. *Ius Naturæ* is confounded with *Ius Gentium*.

As the *Civilians* somtimes confound and somtimes separate the law of *Nature* and the law of *Nations*, so otherwhiles they make them also contrary one to the other. *By the law of Nature all men are borne free, Iure naturali omnes liberi nascuntur.* But *Servitude is by the law of Nations. Iure Gentium servitus invasit*, saith *Vlpian*.

And the Civill law not only makes the law of *Nature* & of *Nations* contrary, but also will have the law of Nations contrary to it self. *Warre*, saith the law, *was brought in by the law of Nations. Ex jure gentium introducta bella*, and yet the law of Nations saith, *since Nature hath made us all of one Kindred, it followes it is not lawfull for one man to lye in wait for another. Cum inter nos cognitionem quandam natura constituit, consequens est hominem homini insidiare nefas esse*, saith *Florentinus*.

Againe, the Civill law teacheth, that *from the law of Nature proceeds the conjunction of man and woman, the procreation and education of Children.* But as for *Religion to God and Obedience to Parents*, it makes it to be *by the law of Nations*.

To touch now the *Canon law*, we may finde in one place that *men are governed either by the law of Nature or by Customes. Homines reguntur Naturali jure aut moribus.* The *law of Nature*, they call *a Divine law, the customes a humane law, Leges aut divinæ sunt aut humanæ divina naturæ humanæ moribus constant.* But in the next place the Canon law makes *Jus* to be either *naturale, aut Civile, aut Gentium.* Though this division agree in tearmes with that of *Vlpian* in the Civill law, yet in the explication of the tearmes there is diversity, for what one law makes to belong to the law of *Nature*, the other refers to the law of *Nations*, as may easily appeare to him that will take the paines to compare the Civill and Canon law in these points.

A principall ground of these diversities and contrarieties of divisions, was an errour which the Heathens taught that *all things*

at

at first were common, and that *all men were equall*. This mistake was not so heynous in those Ethnique Authors of the Civill lawes, who wanting the guide of the history of *Moses* were faine to follow Poets and fables for their Leaders. But for Christians, who have read the Scriptures, to dreame either of a *Community of all things*, or *an equality of all persons*, is a fault scarce pardonable.

To salve these apparent contrarieties of *Community* and *Propriety*: of *Equality* and *Subjection*: the law of *Jus Gentium* was first invented; when that could not satisfie, to mend the matter, this *Jus Gentium* was divided into a *Naturall law of Nations*, and *an Humane Law of Nations*, and the law of nature into a *Primary* and a *Secondary* law of nature; distinctions which make a great sound, but edifie not at all if they come under examination.

If there hath beene a time when All things were common, and All men equall, and that it be otherwise now; we must needes conclude that the law by which things were common, and men equall, was contrary to the law by which now things are proper, and men subject.

If we will allow *Adam* to have been Lord of the World and of his Children, there will need no such distinctions of the law of Nature and of Nations: For the truth will be that whatsoever the Heathens comprehended under these two lawes, is comprised in the morall law.

That the law of Nature is one and the same with the morall may appeare by a definition given by *Grotius*. The *law of Nature* (saith he) *is the dictate of Reason, shewing that in every action by the agreeing or disagreeing of it with naturall reason, there is a morall honesty or dishonesty, and consequently that such an action is commanded or forbidden by God the Author of Nature*. I cannot tell how *Grotius* would otherwise have defined the morall law. And the *Canon* law grants as much, teaching that *the law of Nature is contained in the law and the Gospel: Whatsoever ye will that men doe*, &c. Math. 7.

The tearme of *Jus Naturæ* is not originally to be found in Scripture: for though *T. Aquinas* takes upon him to prove out of the 2. to the *Romans* that there is a *Jus Naturæ*, yet Saint *Paul* doth not use those expresse tearmes, his words are, *the Gentils which have not the law do by Nature the things contained in the law, these*

having not the law are a law unto themſelves: He doth not ſay, Nature is a law unto them, but they are a law unto themſelves. As for that which they call the law of *Nations*, it is not a law diſtinct, much leſſe oppoſite to the law of *Nature*, but it is a ſmall branch or parcell of that great law, for it is nothing but the law of Nature, or the morall law betweene Nations. The ſame Commandement that forbids one private man to rob another, or one Corporation to hurt another Corporation, obliges alſo one King not to rob another King, and one Common-wealth not to ſpoil another: the ſame law that enjoynes Charity to all men, even to enemies, binds Princes and States to ſhew charity to one another as well as private perſons.

And as the *Common, or Civill lawes* of each Kingdome which are made againſt Treaſon, theft, murder, adultery, or the like, are all and every one of them grounded upon ſome particular commandement of the morall Law; ſo all the lawes of Nations muſt be ſubordinate and reducible to the morall law.

The law of Nature or the morall law is like the maine Ocean, which though it be one entire body, yet ſeverall parts of it have diſtinct names, accordingto the diverſity of the Coaſts on which they border. So it comes to paſſe that the law of Nations which is but a part of the law of Nature, may be ſub-divided almoſt *in finitum* according to the variety of the perſons, or matters about which it is converſant.

The law of Nature or the Divine law is generall, and doth only comprehend ſome principles of morality notoriouſly knowne of themſelves, or at the moſt is extended to thoſe things which by neceſſary and evident inference are conſequent to thoſe principles. Beſides theſe, many other things are neceſſary to the well-governing of a Common-wealth: and therefore it was neceſſary that by Humane reaſon ſomthing more in particular ſhould be determined concerning thoſe things which could not be defined by naturall reaſon alone; hence it is that Humane lawes be neceſſary as comments upon the text of the morall law: and of this judgment is *Aquinas*, who teacheth that *neceſſitas legis Humanæ manat ex eo, quod lex naturalis vel Divina generalis eſt, & ſolum complectitur quædam principia morum per ſe nota, & ad ſummum extenditur ad ea quæ neceſſaria & evidenti elatione ex illis*

principiis

principiis consequuntur: præter illa vero multa alia sunt necessaria in republica ad ejus rectam gubernationem: & ideo necessarium fuit ut per humanam rationem aliqua magis in particulari determinarentur circa ea quæ per solam rationem naturalem definiri non possunt. Ludo. Molin. de Iust. Thus much may suffice to shew the distractions in and betweene the *Civill* and *Common lawes* about the law of *Nature* and *Nations*. In the next place we are to consider how *Grotius* distinguisheth these lawes.

To maintaine the Community of things to be Naturall, *Grotius* hath framed new divisions of the law of Nature. First in his Preface to his bookes, *De Iure Belli & Pacis*, he produceth a definition of the law of Nature, in such doubtfull, obscure, and reserved tearms, as if he were diffident of his undertaking; Next in his first Book and first Chapter he gives us another distribution which differs from his doctrine in his Preface.

In his Preface his first principle is, that the *Appetite of society, that is to say, of Community, is an action proper to man.* Here he presently corrects himself with an exception, that *some other creatures are found to desire Society*, and withall he answers the objection thus, that *this desire of Society in Brute Beasts comes from some externall principle*. What he means by *Principium intelligens extrinsecum*, I understand not, nor doth he explaine, nor is it materiall, nor is the argument he useth to any purpose; for admitting all he saith to be true, yet his principle failes, for the question is not, from what principle this desire of Society proceeds in Beasts, but whether there be such a desire, or no? Besides, here he takes the Appetite of Society and Community to be all one, whereas many live in Society which live not in Community.

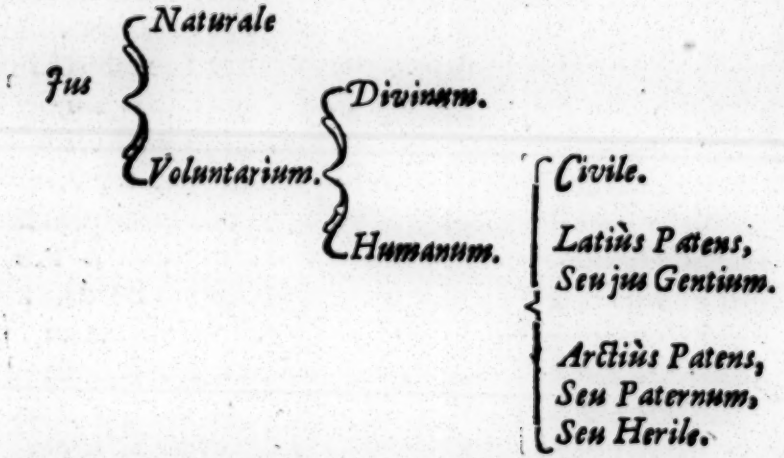
Next he teacheth that *the keeping of Society* (*Custodia Societatis*) *which in a rude manner* (saith he) *we have now expressed is the fountaine of that law which is properly so called.* I conceive by the law properly so called he intends the law of Nature, though he expresse not so much: And to this appetite of *sociable Community* he referres *Alieni abstinentia*, but herein it may be he forgets himselfe, for where there is *Cummunity* there is neither *meum* nor *tuum*, nor yet *alienum*; and if there be no *alienum* there can be no *alieni abstinentia*. To the same purpose he saith that by *the law of Nature* men must *stand to Bargaines, Iuris naturæ sit stare pactis.*

But if all things were common by Nature, how could there be any bargaine?

Againe, *Grotius* tells us, that *from this ſignification of the law there hath flowed another larger*, which conſiſts (ſaith he) *in diſcerning what delights us or hurts us, and in judging how things ſhould be wiſely diſtributed to each one.* This latter he calls the *looſer law of Nature*; the former, *jus ſociale, the law of Nature ſtrictly or properly taken. And theſe two lawes of Nature ſhould have place* (ſaith he) *though men ſhould deny there were a God. But to them that believe there is a God, there is another originall of law, beſide the naturall comming from the free will of God, to the which our owne underſtanding tells us we muſt be ſubject.*

Thus have I gathered the ſubſtance of what is moſt materiall concerning the law of Nature in his preface.

If we turne to the Booke it ſelf we have a diviſion of the law, Into



In the definition of *Jus Naturale* he omits thoſe ſubtilties of *jus Naturæ propriè dictum*, and *quod laxius ita dicitur*, which we find in his preface, and gives ſuch a plaine definition as may fitly agree to the morall law. By this it ſeems the law of Nature and the morall law are one and the ſame.

Whereas he affirmeth that *the actions about which the law of Nature is converſant are lawfull or unlawfull of themſelves, and therefore are neceſſarily commanded or forbidden by God: By which marke this*

law

law of Nature doth not onely differ from Humane law, but from the Divine Voluntary law, which doth not command or forbid those things, which of themselves and by their owne nature are lawfull or unlawfull, but makes them unlawfull by forbidding them, and *due by commanding them.* In this he seemes to make *the law of Nature* to differ from *Gods voluntary law,* whereas in God *Necessary* and *Voluntary* are all one. *Salmasius de Usuris* in the 20. Chapter condemns this opinion of *Grotius:* though he name him not, yet he meanes him, if I mistake not.

In the next place I observe his saying, that some things are by the law of Nature, not *propriè but reductivè*; and that the law of *Nature deales not onely with those things which are beside the will of Man, but also with many things which follow the act of mans will: so Dominion, such as is now in use, mans will brought in: but now that it is brought in, it is against the law of Nature, to take that from thee against thy will which is in thy Dominion.*

Yet for all this *Grotius* maintaines that the *law of Nature is so immutable, that it cannot be changed by God himself.* Hee meanes to make it good with a distinction, *Some things* (saith he) *are by the law of Nature, but not simply, but according to the certain state of things; so the common use of things was naturall as long as Dominion was not brought in; and right for every man to take his owne by force, before lawes were made.* Here if *Grotius* would have spoken plaine, in stead of *but not simply, but according to the certaine state of things,* he would have said *but not immutably, but for a certaine time.* And then this distinction would have run thus; *Some things are by the law of Nature, but not immutably, but for a certain time.* This must needs be the naked sense of his distinction, as appeares by his explication in the words following, where he saith, that *the Common use of things was naturall so long as Dominion was not brought in:* Dominion he saith was brought in by the will of Man, whom by this doctrine *Grotius* makes to be able to change that law which God himself cannot change, as he saith. He gives a double ability to man first, to make that No law of Nature which God made to be the law of Nature: And next to make that a law of Nature which God made not: for now that Dominion is brought in, he maintaines it is against the law of Nature to take that which is in another mans dominion.

Besides

Beſides I finde no Coherence in theſe words, *By the law of Nature it was right for every man to take his owne by force, before lawes made*, ſince by the law of Nature no man had any thing of his own; and untill lawes were made, there was no propriety according to his doctrine.

Jus humanum voluntarium latius patens, he makes to be *the law of Nations, which* (ſaith he) *by the will of All or Many Nations hath received a power to bind*, he addes *of Many, becauſe there is* as he grants *ſcarce any law to be found common to all Nations beſides the law of Nature; which alſo is wont to be called the law of nations, being common to all Nations.* Nay, as he confeſſeth, *often, that is, the law in one part of the world, which in another part of the world is not the law of Nations.*

By theſe ſentences it ſeems *Grotius* can ſcarce tell what to make to be the law of Nations, or where to finde it.

Whereas he makes the law of Nations to have a binding power from the will of men, it muſt be remembred that it is not ſufficient for men to have a will to bind, but it is neceſſary alſo to have a power to bind.

Though ſeveral nations have one and the ſame law, for inſtance, let it be granted that theft is puniſhed by death in many countries: yet this doth not make it to be a law of Nations, becauſe each Nation hath it but as a nationall or civill law of their owne Country, and though it have a binding power from the wil of many nations; yet becauſe each nation hath but a will and power to binde themſelves, and may without prejudice, conſent, or conſulting of any neighbour-nation alter this law if they finde cauſe, it cannot properly be called the law of Nations. That which is the foundation of the law of Nations, is to have it concerne *ſuch things as belong to the mutuall Society of Nations among themſelves, as Grotius* confeſſeth, and not of ſuch things as have no further relation then to the particular benefit of each Kingdome: For as private men muſt neglect their owne profit for the good of their Country, ſo particular nations muſt ſometimes remit part of their benefit for the good of many nations.

Lib. 2. cap. 8.

True it is that in particular Kingdomes and Common-wealths there be Civill and Nationall lawes, and alſo Cuſtomes that obtain the force of lawes: But yet ſuch lawes are ordained by ſome

ſupreame

ſupreame power, and the Cuſtomes are examined, judged, and allowed by the ſame ſupream power. Where there is no ſupream power that extends over all or many nations but only God himſelfe, there can be no lawes made to bind nations but ſuch as are made by God himſelfe: we cannot finde that God made any lawes to binde nations, but only the morall law; as for the Iudiciall law, though it were ordained by God, yet it was not the law of Nations, but of one Nation only, and fitted to that Common-wealth.

If any thinke that the Cuſtomes wherein many Nations do conſent, may be called the law of Nations, as well as the cuſtomes of any one Nation may be eſteemed for nationall lawes; They are to conſider that it is not the being of a cuſtome that makes it lawfull, for then all cuſtomes, even evil cuſtomes, would be lawfull; but it is the approbation of the ſupreame power that gives a legality to the Cuſtomes: where there is no ſupream power over many nations, their Cuſtomes cannot be made legall.

The Doctrine of *Grotius* is, that *God immediately after the Creation did beſtow upon Man-kind in generall a right over things of inferiour Nature——From whence it came to paſſe that preſently every man might ſnatch what he would for his owne uſe, and ſpend what he could, and ſuch an univerſall right was then in ſtead of property; for what every one ſo catched, another could not take from him but by Injury.*

How repugnant this aſſertion of *Grotius* is to the truth of Holy Scripture, Mr. *Selden* teacheth us in his *Mare Clauſum*, ſaying, that Adam *by Donation from God*, Gen. 1.28. *was made the generall Lord of all things, not without ſuch a private dominion to himſelfe, as (without his grant) did exclude his Children: And by donation and aſſignation, or ſome kinde of ceſſion (before he was dead or left any heire to ſucceed him) his Children had their diſtinct territories by right of private Dominion:* Abel *had his flocks, and paſtures for them,* Cain *had his fields for corne, and the Land of Nod where he built himſelfe a City.* Lib. 1. cap. 4.

This determination of Mr. *Seldens* being conſonant to the Hiſtory of the *Bible*, and to naturall reaſon, doth contradict the Doctrine of *Grotius*; I cannot concieve why Mr. *Selden* ſhould afterwards affirme, that *neither the law of Nature, nor the Divine*

law, do command or forbid either communion of all things or private Dominion, but permitteth both.

As for the generall Community betweene *Noah* and his Sons, which Mr. *Selden* will have to be granted to them, *Gen.*9.2. the Text doth not warrant it, for although the Sonnes are there mentioned with *Noah* in the blessing, yet it may best be understood with a subordination or a benediction in succession, the blessing might truly be fulfilled, if the Sonnes either under, or after their Father, enjoyed a private dominion: It is not probable that the private dominion which God gave to *Adam*, and by his donation, assignation or cession to his Children was abrogated, and a Community of all things instituted betweene *Noah* and his Sons, at the time of the Floud: *Noah* was left the sole heire of the World, why should it be thought that God would dis-inherit him of his Birth-right, and make him of all the men in the world, the onely Tenant in Common with his Children? If the blessing given to *Adam*, Gen.1.28. be compared to that given to *Noah* and his Sonnes, *Gen.*9.2. there will be found a considerable difference betweene those two Texts: In the benediction of *Adam*, we finde expressed a *subduing of the Earth, and a Dominion over the Creatures*, neither of which are expressed in the blessing of *Noah*, nor the Earth there once named, it is only said, The *feare of you shall be upon the Creatures, and into your hands are they delivered*, then immediately it followes, *Every moving thing shall be meat for you, as the greene Herb*: The first blessing gave *Adam Dominion* over the Earth and all Creatures, the latter allowes *Noah* liberty to use the living creatures for food: here is no alteration or diminishing of his title to a propriety of all things, but an enlargement only of his commons.

But whether with *Grotius*, Community came in at the Creation, or with Mr *Selden* at the floud, they both agree it did not long continue, *Sed veri non est simile hujusmodi communionem diu obtinuisse*, is the confession of Mr. *Selden*. It seemes strange that *Grotius* should maintaine, that Community of all things should be by the law of Nature, of which God is the Author; and yet such Community should not be able to continue: Doth it not derogate from the providence of God Almighty, to ordaine a Community which could not continue? or doth it not make the

Act

Act of our forefathers, in abrogating the naturall law of Community, by introducing that of propriety, to be a ſinne of a high preſumption?

The prime duties of the ſecond table are converſant about the right of propriety: but if propriety be brought in by a humane law (as *Grotius* teacheth) then the Morall law depends upon the will of man. There could be no law againſt Adultery or theft, if women and all things were common.

Mr. *Selden* ſaith that the law of Nature or of God *nec vetuit nec jubebat, ſed permiſit utrumque tam nempe rerum communionem quam privatum Dominium.* And yet for propriety (which he termes *primæva rerum Dominia*) he teacheth that *Adam received it from God, à numine acceperat*: And for community he ſaith, *wee meete with evident foote-ſteps of the community of things in that donation of God, by which Noah and his Three ſonnes are made Domini pro indiviſio rerum omnium.* Thus he makes the private dominion of *Adam* as well as the common dominion of *Noah* and his Sonnes, to be both by the will of God. Nor doth he ſhew how *Noah*, or his Sonnes, or their poſterity, had any authority to alter the Law of Community which was given them by God.

In diſtributing territories (*Mr.* Selden ſaith) *the conſent as it were of Mankind* (*paſſing their promiſe, which ſhould alſo bind their poſterity*) *did intervene, ſo that men departed from their common right of communion of thoſe things, which were ſo diſtributed to particular Lords or Maſters.* This diſtribution by conſent of Mankind we muſt take upon Credit, for there is not the leaſt proofe offered for it out of Antiquity.

How the conſent of Mankind could binde poſterity when all things were common, is a point not ſo evident where Children take nothing by gift or by diſcent from their Parents, but have an equall and common intereſt with them, there is no reaſon in ſuch caſes, that the acts of the Fathers ſhould binde the Sonnes.

I finde no cauſe why Mr. *Selden* ſhould call *Community a priſtine right*: ſince he makes it but to begin in *Noah*, and to end in *Noahs* Children or Grand-children at the moſt, for he confeſſeth the earth, *à Noachidis ſeculis aliquot poſt diluvium eſſe diviſam.*

 That

That antient tradition which by Mr. *Seldens* acknowledgment hath obtained reputation every where, ſeemes moſt reaſonable, in that it tells us that *Noah himſelfe, as Lord of all, was Author of the diſtribution of the World, and of private dominion, and that by the appointment of an Oracle from God he did confirm this diſtribution by his laſt Will and Teſtament, which at his death he left in the hands of his eldeſt Sonne* Sem, *and alſo warned all his Sonnes, that none of them ſhould invade any of their Brothers dominions, or injure one another, becauſe from thence diſcord and Civill Warre would neceſſarily follow.*

Many concluſions in *Grotius* his Book *De Jure belli & pacis*, are built upon the foundation of theſe two principles. 1. The firſt is that *Communis rerum uſus naturalis fuit.* 2. The ſecond is that *Dominium quale nunc in uſu eſt, voluntas humana introduxit.* Upon theſe two propoſitions of naturall Community and voluntary propriety, depend divers dangerous and ſeditious concluſions, which are diſperſed in ſeverall places. In the 4th. *Chap.* of the firſt Booke, the title of which *Chapter* is of the war of Subjects againſt their Superiours; *Grotius* handleth the queſtion *whether the law of not reſiſting Superiours do binde us in moſt grievous and moſt certaine danger*, and his determination is that *this law of not reſiſting Superiours ſeemes to depend upon the will of thoſe men who at firſt joyned themſelves in a Civill ſociety, from whom the right of government doth come to them that governe: if thoſe had beene at firſt asked if their Will were to impoſe this burthen upon all, that they ſhould chooſe rather to dye, then in any caſe by Armes to repell the force of ſuperiours: I know not whether they would anſwere that it was their Will, unleſſe perhaps with this addition, if reſiſtance cannot be made but with the great diſturbance of the Common-wealth, and deſtruction of many Innocents.* Here we have his reſolution, that in great and certain danger, men may reſiſt their Governours, if it may be without diſturbance of the Common-wealth: if you would know who ſhould be Judge of the greatneſſe and certainty of the danger, or how we may know it, *Grotius* hath not one word of it, ſo that for ought appeares to the contrary, his minde may be that every private man may be judge of the danger, for other judge he appoints none, it had beene a foule fault in ſo deſperate a piece of ſervice, as the reſiſting of Superiours,

Superiours, to have concealed the lawfull meanes, by which we may judge of the greatneſſe or certainty of publique danger, before we lift up our hands againſt Authority, conſidering how prone moſt of us are, to cenſure and miſtake thoſe things for great and certaine dangers, which in truth many times are no dangers at all, or at the moſt but very ſmall ones; And ſo flatter our ſelves, that by reſiſting our Superiours we may do our Country laudable ſervice, without diſturbance of the Commonwealth, ſince the effects of ſedition cannot be certainly judged of but by the events only.

Grotius proceeds to anſwere an objection againſt this Doctrine of reſiſting Superiours. If (ſaith he) *any man ſhall ſay that this rigid Doctrine of dying, rather then reſiſting any injuries of Superiours, is no humane but a divine law: It is to be noted that men at firſt, not by any precept of God, but of their owne accord, led by experience of the infirmities of ſeperated Families againſt violence, did meete together in civill Society, from whence civill power tooke beginning, which therefore St.* Peter *calls an humane ordinance, although elſewhere it be called a Divine ordinance, becauſe God approveth the wholſome inſtitutions of men; God in approving a humane law is to be thought to approve it as humane, and in a humane manner.*

And againe in another place he goeth further, and teacheth us, that *if the queſtion happen to be concerning the primitive will of the people, it will not be amiſſe for the people that now are, and which are accounted the ſame with them that were long agoe to expreſſe their meaning in this matter which is to be followed, unleſſe it certainely appeare, that the people long agoe willed otherwiſe.* Lib. 2. cap. 2.

For fuller explication of his judgement about reſiſting Superiours, he concludes thus: *The greater the thing is which is to be preſerved, the greater is the equity which reacheth forth an exception againſt the words of the law: yet I dare not* (ſaith Grotius) *without difference condemn either ſimple men or a leſſer part of the people, who in the laſt refuge of neceſſity, do ſo uſe this equity, as that in the meane time, they do not forſake the reſpect of the common good.*

Another Doctrine of *Grotius* is, that *the Empire which is exerciſed by Kings, doth not ceaſe to be the Empire of the people; that Kings who in a lawfull order ſucceed thoſe who were elected, have the ſupream power by an uſufructuary right onely, and no propriety.*

Furthermore he teacheth that *the People may chooſe what form of government they pleaſe, and their will is the rule of right.* Populus eligere poteſt qualem vult gubernationis formam, neque ex præſtantia formæ, ſed ex voluntate jus metiendum eſt. *Lib.*1.*ca.*3.

Alſo that *the people chooſing a King may reſerve ſome acts to themſelves, and may beſtow others upon the King, with full authority, if either an expreſſe partition be appointed, or if the people being yet free do command their future King, by way of a ſtanding command, or if any thing be added by which it may be underſtood, that the King may be compelled or elſe puniſhed.*

In theſe paſſages of *Grotius* which I have cited, we find evidently theſe Doctrines.

1. That civill power depends on the will of the people,
2. That private men or petty Multitudes may take up Armes againſt their Princes.
3. That the lawfulleſt Kings have no propriety in their Kingdoms, but an uſufructuary right only: as if the people were the Lords, and Kings but their Tenants.
4. That the Law of not reſiſting Superiours is a humane Law, depending on the will of the people at firſt.
5. That the will of the firſt people if it be not knowne, may be expounded by the people that now are.

No doubt but *Grotius* foreſaw what uſes the people might make of theſe Doctrines, by concluding, if the chiefe power be in the people, that then it is lawfull for them to compell and puniſh Kings as oft as they miſuſe their power: Therefore he tells us he *rejects the opinion of them, who every where and without exception will have the chiefe power to be ſo the Peoples, that it is lawfull for them to compell and puniſh Kings as oft as they miſuſe their power*; and *this opinion* he confeſſeth *if it be altogether received, hath beene and may be the cauſe of many evils.* This cautelous rejection qualified with theſe tearmes of *every where without exception*, and *altogether*, makes but a mixt negation partly *negative*, and partly *affirmative* (which our Lawyers call a *negative pregnant*) which brings forth this modall propoſition, *that in ſome places with ſome exception, and in ſome ſort the people may compell and puniſh their Kings.*

But let us ſee how *Grotius* doth refute the generall opinion, *that people*

people may correct Kings. He frames his argument in theſe words, *It is lawfull for every man to yeild himſelfe to be a private ſervant to whom he pleaſe. What ſhould hinder, but that alſo it may be lawfull for a free people ſo to yeild themſelves to one or more, that the right of governing them be fully ſet over without retaining any part of the right? and you muſt not ſay, That this may not be preſumed, for wee doe not now ſeeke, what in a doubtfull caſe may be preſumed, but what by right may be done.* Thus farre is the argument, in which the moſt that is proved (if we gratifie him, and yeild his whole Argument for good) is this, that the *people may grant away their power without retaining any part.* But what is this to what the people have done? for though the people may give away their power without reſervation of any part to themſelves; Yet if they have not ſo done, but have reſerved a part, *Grotius* muſt confeſſe that the people may compell and puniſh their Kings if they tranſgreſſe, ſo that by his favour the point will be, not what by right may be done, but what in this doubtfull caſe hath beene done, ſince by his own Rule *it is the will and meaning of the firſt people that joyned in Society*, that muſt regulate the power of their Succeſſours.

But on *Grotius* ſide it may be urged, that in all preſumption, the people have given away their whole power to Kings, unleſſe they can prove they have reſerved a part, for if they will have any benefit of a reſervation or exception, it lyes on their part to prove their exception, and not on the Kings parts who are in poſſeſſion.

This anſwer, though in it ſelfe it be moſt juſt and good: yet of all men *Grotius* may not uſe it. For he ſaves the people the labour of proving the primitive reſervation of their forefathers, by making the people that now are competent expoſitors of the meaning of thoſe firſt Anceſters, who may juſtly be preſumed, not to have been either ſo improvident for themſelves, or ſo negligent of all their poſterity, when by the law of Nature they were free and had all things common, at an inſtant without any condition or limitation to give away that liberty and right of Community, and to make themſelves and their Children eternally ſubject to the will of ſuch Governours, as might miſuſe them without controll.

On the behalfe of the people it may be further anſwered to *Grotius*,

Grotius, that although our Anceſtors had made an abſolute grant of their liberty, without any condition expreſſed, yet it muſt be neceſſarily implyed that it was upon condition to be well governed, and that the Non-performance of that implyed condition makes the grant voyd: Or if wee will not allow an implicit condition, then it may be ſaid that the grant in it ſelfe was a voyd grant, for being unreaſonable, and a violation of the law of Nature, without any valuable conſideration. What ſound reply *Grotius* can returne to ſuch anſwers, I cannot conceive, if he keep himſelf to his firſt principle of naturall Community. As *Grotius* Argument againſt the people is not ſound, ſo his Anſwer to the Argument that is made for the people is not ſatisfactory. It is objected, that *he that ordaines, is above him that is ordained. Grotius* anſwers, *Verum duntaxat eſt in ea conſtitutione cujus effectus perpetuo pendet à voluntate conſtituentis, non etiam in ea quæ ab initio eſt voluntatis poſtea vero effectum habet neceſſitatis quomodo mulier virum ſibi conſtituit, cui parere ſemper habet neceſſe.* The Reply may be, that by *Grotius* former Doctrine the very effect of the conſtitution of Kings by the people depends perpetually upon the will of them that conſtitute, and upon no other neceſſity: he will not ſay that it is by any neceſſity of the law of Nature, or by any poſitive law of God, he teacheth that *non Dei precepto ſed ſponte*, men entred into civill Society, that it is an humane ordinance, that God doth onely approve it *ut humanum*, and *humano modo*. He tells us further, That *populus poteſt eligere qualem vult gubernationis formam, & ex voluntate jus metiendum eſt*. That the people may give the King *as litle power as they will, and for as litle time as they pleaſe, that they make temporary Kings as Dictators and Protectors: jus quovis tempore revocabile, id eſt precarium*; as the *Vandalls* in *Affrica*, and the *Gothes* in *Spaine*, would depoſe their Kings, as oft as they diſpleaſed them, *horum enim actus irriti poſſunt reddi ab his qui poteſtatem revocabiliter dederunt, ac proinde non idem eſt effectus nec jus idem.* Here he doth teach in plaine words, the effect doth depend upon the will of the people. By this we may judge how improperly he uſeth the inſtance of a Woman, that appoints her ſelfe a Husband whom ſhe muſt alwaies neceſſarily obey, ſince the neceſſity of the continuance of the Wives obedience depends upon the law of God, which hath made the

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Bond of Matrimony indiſſolvable. *Grotius* will not ſay the like for the continuance of the Subjects obedience to the Prince, neither will he ſay that Women may chooſe Husbands, as he tells us the people may chooſe Kings, by giving their husbands as litle power, and for as litle a time as they pleaſe.

Next it is objected that *Tutors who are ſet over Pupils may be removed if they abuſe their power. Grotius* anſwers, *In tutore hoc procedit qui ſuperiorem habet at in imperiis quia progreſſus non datur in infinitum, omnino in aliqua perſona aut cœtu conſiſtendum eſt: We muſt ſtay in ſome one perſon, or in a multitude, whoſe faults (becauſe they have no ſuperiour judge above them) God hath witneſſed that he will have a particular care of, either to revenge them if he judge it needfull, or to tollerate them either for puniſhment, or tryall of the people.* It is true, in Kingdomes we cannot proceed *in infinitum*, yet we may and muſt go to the higheſt, which by *Grotius* Rule is the people, becauſe they firſt made Kings, ſo that there is no neede to ſtay *in aliqua perſona*, but *in cœtu*, in the people, ſo that by his Doctrine Kings may be puniſhed by the people, but the faults of the people muſt be left to the judgement of God.

I have briefly preſented here, the deſperat inconveniencies, which attend upon the Doctrine *of the Naturall freedome and Community of all things*; theſe and many more abſurdities are eaſily removed, if on the contrary we maintaine the *naturall and private dominion of Adam*, to be the fountaine of all government and propriety: And if we marke it well, we ſhall finde that *Grotius* doth in part grant as much; The ground why thoſe that now live do obey their Governours, is the will of their fore-fathers, who at the firſt ordained Princes, and in obedience to that will, the Children continue in ſubjection; this is according to the minde of *Grotius*: ſo that the queſtion is not *whether Kings have a fatherly power over their Subjects, but how Kings firſt came by it. Grotius* will have it that our forefathers being all free, made an aſſignment of their power to Kings; the other opinion denies any ſuch generall freedome of our fore-fathers, but derives the power of Kings from the Originall Dominion of *Adam*.

This naturall Dominion of *Adam* may be proved out of *Grotius* himſelfe, who teacheth that *generatione jus acquiritur parentibus in liberos*, and that *naturally no other can be found, but the Parents*

to whom the government ſhould belong, & the right of ruling and compelling them doth belong to Parents. And in another place he hath theſe words, ſpeaking of the firſt Commandement, *Parentum nomine qui naturales ſunt magiſtratuus, etiam alios rectores par eſt intelligi quorum authoritas ſocietatem humanam continet*: and if Parents be naturall Magiſtrates, Children muſt needs be born naturall Subjects.

But although *Grotius* acknowledge Parents to be naturall Magiſtrates, yet he will have it, that Children when they come to full age, and are ſeperated from their Parents, are free from naturall ſubjection. For this he offers proofe out of *Ariſtotle*, and out of Scripture. Firſt for *Ariſtotle*, we muſt note, he doth not teach that every ſeperation of Children of full age, is an obtaining of liberty, as if that men when they come to yeares might voluntarily ſeperate themſelves, and caſt off their naturall obedience; but *Ariſtotle* ſpeakes onely of a paſſive ſeperation, for he doth not ſay that Children are ſubject to Parents *untill they do ſeperat, but* he ſaith *untill they be ſeperated*, χωρισθῶσιν in the verb of the paſſive voice. That is, untill by law they be ſeperated: for the law (which is nothing elſe but the will of him that hath the power of the ſupream Father) doth in many caſes for the publique benefit of Society, free Children from ſubjection to the ſubordinate Parent, ſo that the naturall ſubjection by ſuch Emancipation of Children is not extinguiſhed, but only aſſumed and regulated by the parent paramount.

Secondly, *Grotius* cites *Numb.* 30. to prove that the *Power of the Fathers over the Sonnes and Daughters, to diſſolve their vowes, was not perpetuall, but during the time onely whilſt the Children were part of the Fathers family.* But if we turne to the Chapter, we may finde that *Grotius* either deceives himſelfe or us, for there is not one word in that Chapter concerning the vowes of Sonnes, but of Daughters onely, being in their Fathers family; and the being of the Daughter in the Fathers houſe, meaneth only the Daughters being a Virgin and not marryed, which may be gathered by the argument of the whole Chapter, which taketh particular order for the vowes of Women of all eſtates. Firſt, for Virgins in the 3. *verſe*. Secondly, for Wives in generall in the *6. verſe*. Thirdly, for Widowes and Women divorced in the *9. verſe*. There is

no

no law for Virgins out of their Fathers houſes, we may not think they would have beene omitted, if they had been free from their Fathers, we finde no freedome in the Text for Women, till after Marryage: And if they were marryed though they were in their Fathers houſes, yet the Fathers had no power of their vowes, but their Husbands.

If by the law of Nature, departure from the Fathers houſe had emanticipated Children, why doth the civill law contrary to the law of Nature, give power and remedy to Fathers for to recover by action of Law their Children that depart, or are taken from them without their conſent? without the conſent of parents the civill law allowes no emanticipation.

Concerning ſubjection of Children to Parents, *Grotius* diſtinguſheth 3. ſeverall times.

The firſt is the time of *Imperfect Judgement.*

The ſecond is the time of *Perfect Judgment:* but *whilſt the Son remaines a part of the Fathers family.*

The third is, *the time after he hath departed out of his Fathers family.*

In the firſt time he ſaith, *All the actions of Children are under the dominion of the Parents.*

During the ſecond time, *When they are of the age of Mature judgement they are under their Fathers command in thoſe actions only which are of moment for their Parents family. In other actions the Children have a power or morall faculty of doing, but they are bound in thoſe alſo to ſtudy alwaies to pleaſe their Parents. But ſince this duty is not by force of any morall faculty as thoſe former are, but only of piety, obſervance, and duty of repaying thanks, it doth not make any thing void which is done againſt it, as neither a gift of any thing is void, being made by any owner whatſoever againſt the rules of parſimony.*

In both theſe times the right of ruling and compelling is (as *Grotius* acknowledgeth) *comprehended ſo far forth as Children are to be compelled to their duty or amended, although the power of a Parent doth ſo follow the perſon of a Father, that it cannot be pulled away and transferred upon another, yet the Father may naturally pawn, or alſo ſell his Son if there be need.*

In the third time, he ſaith *the Sonne is in all things free and of his*

owne authority: alwaies that duty remaining of piety and obſervance, the cauſe of which is perpetuall. In this triple diſtinction though *Grotius* allow children in ſome caſes during the ſecond, and in all caſes during the third time to be free, and of their owne power by a morall faculty: yet in that he confeſſeth, *in all caſes children are bound to ſtudy alwaies to pleaſe their Parents out of Piety and Duty, the cauſe of which* as he ſaith *is perpetuall*: I cannot conceive how in any caſe children can naturally have any power or morall faculty of doing what they pleaſe without their Parents leave, ſince they are alwaies bound to ſtudy to pleaſe their Parents. And though by the lawes of ſome Nations Children when they attain to yeares of diſcretion have power and liberty in many actions: yet this liberty is granted them by poſitive and humane lawes only which are made by the ſupreame fatherly power of Princes, who regulate, limit, or aſſume the authority of inferiour Fathers for the publique benefit of the Common-wealth: ſo that naturally the power of Parents over their Children never ceaſeth by any Seperation, but only by the permiſſion of the tranſcendent fatherly power of the ſupream Prince, Children may be diſpenſed with or priviledged in ſome caſes from obedience to ſubordinate parents.

Touching the point of diſſolving the vowes of Children, *Grotius* in his laſt edition of his Booke hath corrected his firſt, for in the firſt he teacheth *that the power of the Father was greater over the Daughter dwelling with him then over the Son, for her vow he might make void, but not his*: But in ſtead of theſe words in his laſt edition he ſaith *that the power over the Sonne or Daughter to diſſolve vowes was not perpetuall, but did indure as long as the children were a part of their Fathers family.* About the meaning of the text out of which he drawes this concluſion I have already ſpoken.

Three waies *Grotius* propoundeth whereby *Supream power* may be had.

Firſt, by *full right of Propriety.*

Secondly, by an *Uſufructuary Right.*

Thirdly, by a *Temporary Right.*

The *Roman* dictators, ſaith he, *had Supream power by a temporary right, as well thoſe Kings who are firſt elected, as thoſe that in a lawfull right ſucceed to Kings elected have ſupream power by an uſufructuary*

fructuary right: ſome Kings that have got ſupreame power by a juſt Warre, or into whoſe power ſome people for avoyding a greater evil have ſo yeilded themſelves, as that they have excepted nothing, have a full Right of Propriety.

Thus we find but two meanes acknowledgd by *Grotius* whereby *a King may obtaine a full right of Propriety in a Kingdome. That is, either by a juſt Warre, or by Donation of the People.*

How a Warre can be juſt without a precedent title in the conquerour *Grotius* doth not ſhew, and if the title onely make the war juſt, then no other right can be obtained by warre then what the title bringeth, for a juſt warre doth onely put the conquerour in poſſeſſion of his old right, but not create a new. The like which *Grotius* ſaith of ſucceſſion may be ſaid of warre. *Succeſſion* ſaith he *is no title of a Kingdome which gives a forme to the Kingdome, but a continuation of the old, for the right which began by the Election of the family is continued by ſucceſſion, wherefore ſo much as the firſt election gave, ſo much the ſucceſſion brings.* So to a conquerour that hath a title warre doth not give, but put him in poſſeſſion of a right: and except the Conquerour had a full right of Propriety at firſt, his conqueſt cannot give it him: for if originally he and his Anceſtors had but an uſufructuary right, and were outed of the poſſeſſion of the Kingdome by an uſurper: here though the reconqueſt be a moſt juſt warre, yet ſhall not the conquerour in this caſe gaine any full right of propriety, but muſt be remitted to his uſufructuary right onely: for what Juſtice can it be, that the Injuſtice of a third perſon, an uſurper, ſhould prejudice the people, to the diveſting of them of that right of Propriety, which was reſerved in their firſt Donation to their elected King, to whom they gave but an uſufructuary right, as *Grotius* conceiveth: wherefore it ſeemes impoſſible that there can be a juſt warre whereby a full right of Propriety may be gained according to *Grotius* principles. For if a King come in by conqueſt, he muſt either conquer them that have a governour, or thoſe people that have none: if they have no governour, then they are a free people, and ſo the warre will be unjuſt to conquer thoſe that are free, eſpecially if the freedome of the people be by the primary law of Nature as *Grotius* teacheth: But if the people conquered have a governour, that governour hath either a title or not; if he have

a title it is an unjuſt warre that takes the Kingdome from him: If he have no title but onely the poſſeſſion of a Kingdome, yet it is unjuſt for any other man that wants a title alſo, to conquer him that is but in poſſeſſion, for it is a juſt rule that *where the caſes are alike, he that is in poſſeſſion is in the better condition, in pari cauſa poſſidentis melior conditio.* And this by the law of Nature even in the judgement of *Grotius.* But if it be admitted that he that attempts to conquer have a title; and he that is in poſſeſſion hath none: here the conqueſt is but in nature of a poſſeſſory action to put the conquerour in poſſeſſion of a primer right, and not to raiſe a new title, for warre begins where the law failes. *Ubi judicia deficiunt incipit bellum.* And thus upon the matter I cannot find in *Grotius* Booke *De Iure belli,* how that any caſe can be put wherein *by a juſt warre a man may become a King* pleno jure proprietatis.

Lib. 2. cap. 23.

Lib. 2. cap. 1.

All government and ſupreame power is founded upon publique ſubjection, which is thus defined by *Grotius. Publica ſubjectio eſt, qua ſe Populus homini alicui, aut pluribus hominibus, aut etiam populo alteri in ditionem dat.* If ſubjection be the gift of the people, how can ſupream power *pleno jure,* in full right, be got by a juſt warre?

Lib. 2. cap. 5.

As to the other meanes whereby Kings may get ſupream power in full right of propriety, *Grotius* will have it to be *when ſome people for avoiding a greater evil doe ſo yeild themſelves into anothers power as that they doe except nothing.* It would be conſidered how, without warre, any people can be brought into ſuch danger of life, as that becauſe they can finde no other waies to defend themſelves, or becauſe they are ſo preſſed with poverty as they cannot otherwiſe have meanes to ſuſtaine themſelves, they are forced to renounce all right of governing themſelves, and deliver it to a King.

But if ſuch a caſe cannot happen but by warre onely, which reduceth a people to ſuch tearmes of extremity as compells them to an abſolute abrenuntiation of all ſoveraignity: Then warre which cauſeth that neceſſity is the prime meanes of extorting ſuch Soveraignty, and not the free gift of the people, who cannot otherwiſe chooſe but give away that power which they cannot keepe.

Thus upon the reckoning the two waies, propounded by *Grotius,*

tius, are but one way, and that one way in concluſion is no way whereby ſupream power may be had in full right of Propriety. His two waies are a *Iuſt warre*, or a *Donation of the People*, a juſt warre cannot be without a title, no title without donation of the people, no donation without ſuch a neceſſity as nothing can bring upon the donors but a warre. So that howſoever *Grotius* in words acknowledge that Kings may have full right of Propriety, yet by conſequence he denies it by ſuch circular ſuppoſitions as by coincidence deſtroy each other, and in effect he leaves all people a right to plead in barre againſt the right of propriety of any Prince either *per minas* or *per dures*.

Many times ſaith *Grotius* it happens that warre is grounded upon *expletive Iuſtice*, *Iuſtitiam expletricem*, which is *when a man cannot obtaine that he ought, he takes that which is as much in value which in morall eſtimation is the ſame*. For in warre when the ſame province cannot be recovered to the which a man hath a title, he recovers another of the like value. This recovery cannot give a full right of propriety: becauſe the juſtice of ſuch a warre reacheth no further then to a compenſation for a former right to another thing, and therefore can give no new right.

I am bound to take notice of a caſe put by *Grotius* amongſt thoſe cauſes wch he thinks ſhould move the people to renounce al their right of governing and give it to another, *It may alſo happen* (ſaith he) *that a Father of a family poſſeſſing large territories, will not receive any man to dwell within his land upon other condition*. And in another place he ſaith that *all Kings are not made by the People, which may be ſufficiently underſtood by the examples of a Father of a family receiving ſtrangers under the law of Obedience*. In both theſe paſſages we have a cloſe and curt acknowledgment that *a Father of a family may be an abſolute King over ſtrangers without the choice of the people*, now I would know whether ſuch Fathers of families have not the ſame abſolute power over their owne Children without the peoples choice, which he allowes them over ſtrangers: if they have I cannot but call them abſolute proprietary Kings, though *Grotius* be not willing to give them that title in plaine tearmes: for indeed to allow ſuch Kings were to condemne his own principle, that *Dominion came in by the will of the people*, and ſo conſequently to overthrow his *uſufructuary Kings*, of whom I am next to ſpeak.

Grotius

Grotius ſaith that *the law of obeying or reſiſting Princes depends upon the will of them who firſt met in civil Society, from whom power doth flow to Kings.* And that *men of their owne accord came together into civill Society, from whence ſprings civill power, and the people may chooſe what forme of government they pleaſe.* Upon theſe ſuppoſitions he concludes that Kings elected by the people have but an *uſufructuary right*, that is a right to take the profit or fruit of the Kingdome, but not a right of propriety or power to alienate it. But why doth he call it an *uſufructuary right?* It ſeemes to me a tearm too mean or baſe to expreſſe the right of any King, and is derogatory to the dignity of ſupream Majeſty. The word *uſufructuary* is uſed by the Lawyers to ſignifie him that hath the uſe, profit or fruit of ſome corporall thing that may be uſed without the property, for of *fungible things (res fungibiles*, the Civilians call them) that are ſpent or conſumed in the uſe, as Corne, Wine, Oyle, Mony, there cannot be an *uſufructuary right.*

It is to make a Kingdome all one with a Farme, as if it had no other uſe but to be let out to him that can make moſt of it: whereas in truth it is the part and duty of a King to governe, and he hath a right ſo to doe, and to that end ſupream power is given unto him, the taking of the profit or making uſe of the patrimony of the Crowne is but as a meanes only to enable him to performe that great work of Government.

Beſides *Grotius* will not only have an elected King, but alſo his lawfull ſucceſſors to have but an *uſufructuary right*, ſo that though a King hath a Crowne to him and to his heires, yet he will allow him no propriety becauſe he hath no power to alienate it, for he ſuppoſeth the primary will of the people to have beene to beſtow ſupream power to go in ſucceſſion, and not to be alienable, but for this he hath no better proofe then a naked preſumption, *In regnis quæ populi voluntate delata ſunt concedo non eſſe preſumendum eam fuiſſe populi voluntatem ut alienatio imperii ſui regi permitteretur.*

But though he will not allow Kings a right of propriety in their Kingdomes, yet a right of propriety there muſt be in ſome body, and in whom but in the people? for he ſaith *the empire which is exerciſed by Kings doth not ceaſe to be the empire of the People*, His meaning is, the uſe is the Kings, but the property is the Peoples.

But

But if the power to alienate the Kingdome be in him that hath the property, this may prove a comfortable doctrine to the people: but yet to allow a right of ſucceſſion in Kings, and ſtill to reſerve a right of property in the people, may make ſome contradiction: for the ſucceſſion muſt ether hinder the right of alienation which is in the people; or the alienation muſt deſtroy that right of ſucceſſion, which by *Grotius* confeſſion may attend upon elected Kings.

Though *Grotius* confeſſe that ſupream power be *Unum quiddam and in it ſelfe indiviſible*, yet he ſaith, *ſomtimes it may be divided either by parts potentiall, or ſubjective*. I take his meaning to be that the government, or the governed may be divided: an example he gives of the *Roman* Empire which was divided into the *Eaſt* and *Weſt*: but whereas he ſaith *fieri poteſt*, &c. *It may be the people chooſing a King may reſerve ſome actions to themſelves, and in others they may give full power to the King*. The example he brings out of *Plato* of the *Heraclides* doth not prove it, and it is to dream of ſuch a forme of government as never yet had name, nor was ever found in any ſetled Kingdome, nor cannot poſſible be without ſtrange confuſion.

If it were a thing ſo voluntary and at the pleaſure of men when they were free to put themſelves under ſubjection, why may they not as voluntarily leave ſubjection when they pleaſe, and be free againe? if they had a liberty to change their Naturall freedome, into a voluntary ſubjection, there is ſtronger reaſon that they may change their voluntary ſubjection into naturall freedome, ſince it is as lawfull for men to alter their wills as their Judgements.

Certainly it was a rare felicitie that all the men in the World at one inſtant of time ſhould agree together in one minde to change the naturall Community of all things into private Dominion: for without ſuch an unanimous conſent it was not poſſible for Community to be altered: for if but one man in the world had diſſented, the alteration had been unjuſt, becauſe that man by the law of nature had a right to the common uſe of all things in the world; ſo that to have given a propriety of any one thing to any other, had beene to have robbed him of his right to the common uſe of all

things. And of this judgement the Jesuit *Lud. Molina* seemes to be in his booke *De Justitia*, where he saith, *Si aliquis de cohabitantibus*, &c. *If one of the neighbours will not give his consent to it, the Common-Wealth should have no authority over him, because when every other man hath no right or authority over him, and therefore can they not give authority to the Common-Wealth over him.*

If our first parents or some other of our forefathers did voluntarily bring in propriety of goods and subjection to governours, and it were in their power either to bring them in or not, or having brought them in, to alter their minds and restore them to their first condition of Community and Liberty; what reason can there be alleaged that men that now live should not have the same power? So that if any one man in the world, be he never so mean or base, will but alter his will, and say, he will resume his naturall right to Community, and be restored unto his naturall Liberty, and consequently take what he please and do what he list, who can say that such a man doth more then by right he may? And then it will be lawfull for every man when he please to dissolve all government, and destroy all property.

Whereas *Grotius* saith, *That by the law of Nature all things were at first common*, and yet teacheth that *after propriety was brought in, it was against the law of Nature to use Community*. He doth thereby not only make the law of Nature changeable, which he saith God cannot do, but he also makes the law of Nature contrary to it selfe.

The End.

Errata.

PAge 2. lin. 18. read *pure Nature.* pag. 6. lin. 28. read *the nobler and principall.* pag. 41. lin. 18. read χωειδῆ.